FILED
OCT 23 1965
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 692

THE PURE OIL COMPANY,
Petitioner

versus

PASCUAL SUAREZ,
Respondent

PETITION FOR CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner seeks certiorari to review the judgment of the Court of Appeals for the Fifth Circuit in this case, and, in support of its petition, respectfully shows:

Opinion Below and **Jurisdiction**

The District Court rendered no opinion. The opinion of the Court of Appeals is reported at 346 F2d 890. The judgment of the Court of Appeals is dated June 16, 1965, and was entered on the same date. Rehearing was denied on September 7, 1965. Jurisdiction of this Court lies under 28 USC 1254(1).

Question Presented

Whether venue under the Jones Act, 46 USC 688, is limited to "the court of the district in which the defendant employer resides (*i.e.*, is incorporated) or in which his principal office is located", as explicitly provided in the special-venue provisions of the Act as construed judicially prior to 1948, and as held since 1948 by the Third Circuit and several district courts, or whether such venue was extended by the general venue provision [28 USC 1391(c)] of the 1948 revision of the Judicial Code to include districts in which the employer merely does business, as held by other federal courts, and by the Fifth Circuit in this case.

The Fifth Circuit recognized, in its opinion herein, "that *Leith* (the Third Circuit's decision in point) is diametrically opposed to the result reached in the instant case" (346 F2d at 894; Appendix, p. 13).

Statutes Involved

46 USC 688: "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action

all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. ***Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.***" (Emphasis supplied.)

28 USC 1391(c): "A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes."

Statement of the Case

Respondent, a seaman and member of the crew of the S/S *Pure Oil,* having been injured aboard his vessel on the high seas, filed a civil action against petitioner, his former employer, under the Jones Act, in the District Court for the Southern District of Florida, a State in which petitioner does business. R 4, 8.

Petitioner promptly moved to transfer the action to the district in which it has its principal office, the Northern District of Illinois, Eastern Division. R 6.

After hearing argument, the District Court entered an order refusing the transfer on the ground that venue under the Jones Act lies "in any district where the defendant is doing business". R 10.

An interlocutory appeal was granted from the order, which was affirmed by the Court of Appeals.

Argument

In *Fourco Glass Co. vs Transmirra Products Corp.*, 353 US 222 (1957), this Court granted certiorari to resolve an inter-Circuit conflict as to the impact of the 1948 revision of the Judicial Code on special-venue provisions, and held that the general-venue provisions of the 1948 revision, fixing a corporation's residence for venue purposes wherever it is doing business, neither override nor expand the meaning of the special-venue provisions restricting patent suits to the defendant's residence, theretofore defined judicially as the state of incorporation. In so holding, this Court declared that "no changes of law or policy are to be presumed from changes of language in the revision unless an intent to make such changes is clearly expressed". 353 US at 227.[1]

In *Leith vs Oil Transport Co.*, 321 F2d 591 (CA 3-1963), the Court of Appeals for the Third Circuit held that, by virtue of this Court's *Fourco* holding, the general-venue provisions of the 1948 revision neither override nor expand the special-venue provision of the Jones Act, laying venue of actions thereunder exclusively in the district "in which the defendant employer resides or in which his principal office is located", and that venue of a Jones-Act suit may accordingly not be laid in any other district in which the defendant may be doing business.

In the case at bar, the Fifth Circuit arrived at precisely the contrary conclusion, holding that Jones-Act venue is,

[1] One of the conflicting decisions disapproved in that case by this Court was that of the Court of Appeals for the Fifth Circuit in *Dalton vs Shakespeare Co.*, 196 F2d 469 (1952).

since 1948, properly laid wherever the defendant is doing business; and the Court conceded "that *Leith* is diametrically opposed to the result reached in the instant case" (346 F2d at 894; Appendix, p. 13).

This conflict between the Third and Fifth Circuits mirrors the same conflict among other federal courts.[2]

Unlike the Third Circuit and certain of the courts whose decisions are cited in footnote 2, the Fifth Circuit read this Court's *Fourco* opinion as not laying down any general rule as to the impact of the 1948 revision on special-venue provisions, but as contemplating "an analysis of the relationship of section 1391(c) to special-venue statutes in light of the history and purpose of the special provisions" (346 F2d at 895; Appendix, p. 15). However, the Congressional history and purpose reflected in the Jones-Act venue provision seem clearly contrary to the Fifth Circuit's conclusion.[3]

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[2] As to Jones-Act venue, district courts in Louisiana, Mississippi and Virginia have agreed with the Third Circuit. *Blanco vs Gulf Coast Transp.*, 235 FS 197 (WD La.-1964); *Barnes vs E. J. Platt Fisheries*, 237 FS 390 (ND Miss.-1964); *Rodriquez vs United Fruit Co.*, 236 FS 680 (ED Va.-1964). The First Circuit and the district court for Alaska have reached the opposite result, although without discussing this Court's *Fourco* decision. *Connolly vs Farrell Lines*, 268 F2d 653 (CA 1-1959), cert. den., 361 US 902; *Garland vs Alaska S. S. Co.*, 194 FS 792 (DC Alaska-1961). Other courts have held the *Fourco* rationale applicable to other special venue provisions: *Zonolite Co. vs United States*, 209 FS 597 (WD Pa.-1962) (suits to enforce or set aside ICC orders); *R. J. Coulter Funeral Home vs National Burial Ins. Co.*, 192 FS 522 (ED Tenn.-1960) (Clayton Act suits); *United Transit Co. vs United States*, 158 FS 856 (MD Tenn.-1957).

[3] When the Jones Act was adopted, the Senate proposed a broad FELA-type provision laying venue wherever the defendant did business. The House objected, whereupon the present limited venue provision was incorporated in the Act. See Senate Report 573, 66th Cong., 2d Sess., p. 23; House Reports 1093 (p. 21), 1102 (p. 35) and 1107 (pp. 19, 32), 66th Cong., 2d Sess.

In view of the large volume of Jones-Act cases, it is obviously of great practical importance to the expeditious disposition of litigation by the lower federal courts, that the inter-Circuit conflict as to proper venue in these cases be resolved promptly.[4]

Conclusion

Since this Court granted certiorari in 1957 in the *Fourco* case, to resolve the conflict as to the impact of the 1948 revision of the Judicial Code on special-venue provisions, a new divergence of opinion among the Circuits, and also among district courts, has arisen. Prompt resolution of this divergence is essential to proper judicial administration.

It is accordingly respectfully submitted that certiorari should be granted herein.

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October, 1965

[4] It is estimated that an aggregate of 3192 Jones Act cases will have been filed in all United States district courts in 1965. Of these, 1026 will have been filed in district courts within the Fifth Circuit.

APPENDIX

OPINION OF THE COURT OF APPEALS

Before WISDOM and GEWIN, Circuit Judges, and BREWSTER, District Judge.

GEWIN, Circuit Judge: The appellee instituted this civil action in the District Court for the Southern District of Florida to recover damages for injuries he received while employed in the capacity of a seaman aboard the vessel S.S. "PURE OIL," owned and operated by The Pure Oil Company. His complaint proceeded on two theories: (1) negligence under the Jones Act, 46 U.S.C.A. § 688, and (2) breach of the shipowner's duty to provide a seaworthy vessel. The company moved to transfer the case to the Northern District of Illinois on the ground that venue was not properly laid in the Southern District of Florida.[1] The trial court denied the motion, but certified the question under 28 U.S.C.A. § 1292(b), and this interlocutory appeal ensued.

The relevant provision of the Jones Act, 46 U.S.C.A. § 688, provides as follows:

> "Jurisdiction in such actions shall be under the court of the district in which the defendant employer *resides or in which his principal office is located.*" (Emphasis supplied.)

The parties stipulated that The Pure Oil Company "has transacted a substantial amount of business in Florida and

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[1] The special venue requirements of the Jones Act must be satisfied where a civil action is predicated on both unseaworthiness and Jones Act theories, even though the provisions of the general venue section would apply in a civil action based solely on unseaworthiness. See Branic v. Wheeling Steel Corp. (3 Cir. 1945) 152 F.2d 887.

the Southern District of Florida, was doing substantial amounts of business in the Southern District of Florida at the time of the commencement of this action, and hopes to continue doing substantial business therein. . . ." The company also filed an uncontradicted affidavit which states that it is incorporated in Ohio and maintains its principal office in Cook County, Illinois. The sole question for decision is whether the provision of the Jones Act quoted above enables an injured seaman to sue his employer corporation wherever the employer does business or whether his choice of forums is limited to the districts in which the employer is incorporated and maintains its principal office.

Although the quoted provision of the Jones Act literally speaks of "jurisdiction," it was early held to refer only to proper venue. *Panama R.R. v. Johnson*, 265 U.S. 375, 68 L.Ed. 748 (1924). Hence, the privilege need not be given effect unless the defendant insists upon it. *E.g., Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 84 L.Ed. 167 (1939); *Panama R.R. v. Johnson, supra;* Wright Federal Courts 128 (1963). It is established that, in the absence of a statutory directive to the contrary, the "residence" of a corporation for venue purposes is limited to the state of its incorporation. See *Suttle v. Reich Bros. Constr. Co.*, 333 U.S. 163, 92 L.Ed. 614 (1948); *Shaw v. Quincy Mining Co.*, 145 U.S. 444,450, 36 L.Ed. 768,771 (1892).

The appellee makes two arguments in support of the district court's denial of the motion to transfer, the first of which can be disposed of in short order. According to

appellee, the Jones Act was passed in 1920 to expand and liberalize the relief afforded to seamen for injuries they sustained in their employment. Instead of devising separate standards to be applied in personal injury suits by seamen, Congress adopted the expedient of incorporating by reference the more detailed provisions which govern the liability of railroads to their employees.[2] Therefore, appellee argues that the special venue provisions of the Federal Employers Liability Act, under which venue against Pure Oil would undoubtedly be proper in the instant case,[3] are applicable to a civil action under the Jones Act. However, this argument does not adequately accommodate the well-recognized and eminently logical canon of statutory construction that the specific provisions of a statute control exclusively over the broader and more general provisions of another statute which may relate to the same subject matter in the absence of a clear manifestation to the contrary by the legislature. See *Bulova Watch Co. v. United States*, 6 L.Ed.2d 72, 76, (1961); *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222,228-29, 1 L.Ed.2d 786,790-91 (1957). As one court has stated, "The short answer to [appellee's] argument is that Congress has seen fit to impose different venue requirements in Jones Act cases. To now hold that the venue requirements under the Federal Employers' Lia-

[2] "[A]nd in such action *all* statutes of the United States *modifying or extending* the common-law right or remedy in cases of personal injury to railway employees shall apply. . . ." 46 U.S.C.A. § 688 (Emphasis supplied.)

[3] The FELA contains much broader venue provisions than those of the Jones Act. Under that statute, venue is proper in the district where the defendant resides, where the cause of action arose, or where the defendant is "doing business" at the time of the commencement of the action. 45 U.S.C.A. § 56.

bility Act are controlling would negate the plain language of 46 U.S.C. § 688." *Rodriquez v. United Fruit Co.*, 236 F. Supp. 680,682 (E.D.Va. 1964). We are not persuaded to hold otherwise merely because the two other provisions of 45 U.S.C.A. § 56 have been held applicable in Jones Act cases.[4] Neither of the subjects covered by those provisions is dealt with specifically in the Jones Act, and they would thus be fairly covered by the general reference to the FELA. See *Panama R.R. v. Johnson*, 264 U.S. 375,392, 68 L.Ed. 748,755 (1924).[5]

Appellee makes a far more appealing argument, at least from the point of view of statutory construction, in its as-

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[4] The same section of the FELA which contains its venue provision also contains a provision fixing the limitation period for filing suits and a provision reserving to the state courts concurrent jurisdiction over FELA claims. Both these provisions were applied to the Jones Act in Engel v. Davenport, 271 U.S. 33, 70 L.Ed. 813 (1926). See also Cox v. Roth, 348 U.S. 207, 99 L.Ed. 260 (1955); Panama R.R. v. Vasquez, 271 U.S. 557, 70 L.Ed. 1085 (1926).

[5] Appellee also relies upon the decision of this Circuit in Arthur v. Compagnie Generale Transatlantique (5 Cir. 1934) 74 F.2d 662 as a justification for construing the venue provisions of the Jones Act as nonexclusive. In that case we held that the Jones Act's venue requirements were inapplicable to a suit in a federal court against a defendant incorporated in a foreign country. We do not deem this case controlling in the instant situation. Where, for example, an American seaman sues an alien corporation under the Jones Act for an injury which occurred in the territorial waters of the United States, the *Arthur* result would certainly be compelled as a practical necessity; otherwise, the venue provision of the Jones Act would effectively preclude the seaman from invoking any federal forum if the employer chose to raise his venue objection. Such was surely not the intention of the drafters of the Jones Act. Indeed, the Jones Act venue requirements have also been held inapplicable in state courts. Bainbridge v. Merchants & Miners' Transp. Co., 287 U.S. 278, 77 L.Ed. 302 (1932). We do not think that the *Arthur* case should be read as suggesting that the venue provisions of the Jones Act do not furnish the exclusive venue requirements in any circumstances. Clearly they apply to a domestic corporation such as we have in the instant case.

sertion that the definition of the term "residence" which was added to the general venue statute in 1948, 28 U.S.C.A. § 1391(c), should be read into the Jones Act venue requirements. Prior to 1948—and, indeed, at the time Congress enacted the Jones Act in 1920—the general venue statute was geared to the residence of either the defendant or, in diversity cases, the plaintiff as well. The residence of a corporation was uniformly restricted to the state of its incorporation, even in Jones Act suits. *E.g.*, *Burris v. Matson Nav. Co.* (S.D.N.Y. 1940) 37 F.Supp. 648. In the course of the general revision of the Judicial Code in 1948, Congress inserted subsection (c) into the general venue statute. That section provides as follows:

> "(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, *and such judicial district shall be regarded as the residence of such corporation for venue purposes.*" (Emphasis supplied.)

It is the last clause of that subsection which concerns us primarily, for if that phrase can be read as defining the residence of a defendant corporation for the purposes of the Jones Act's venue provisions, then the trial court properly denied Pure Oil's motion to transfer.

If section 1391(c) and the Jones Act venue provision are viewed together in light of the remedial purposes of the Jones Act, the most logical conclusion might well be that the general venue statute did expand the definition of residence in the Jones Act. In fact, all the courts which were faced with the question between 1948 and 1957 read

the Jones Act in light of the new concept of corporate residence embodied in section 1391(c).[6]

In 1957 however, the Supreme Court held that section 1391(c) did not define the residence of a corporate defendant in patent infringement litigation. *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 1 L.Ed. 2d 786 (1957). Since the decision in that case, most of the federal courts have concluded that its rationale foreclosed the application of section 1391(c) to Jones Act venue,[7] although a few have reached a contrary result.[8] The only other Circuit court which has confronted the issue in light of the *Fourco* case has read that decision as militating against the application of section 1391(c) to the Jones Act. *Leith v. Oil Transport Co.* (3 Cir. 1963) 321 F.2d 591. In addition, many courts have applied the *Fourco* rationale to other special venue statutes, holding that the provisions of the general venue section do not supplement those special statutes.[9]

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[6] See Hutchison v. Pacific-Atlantic S.S. Co. (9 Cir. 1954) 217 F.2d 384; Franklin v. Tomlinson Fleet Corp. (N.D. Ill. 1957) 158 F. Supp. 850; Phillips v. Pope & Talbot, Inc., (S.D.N.Y. 1952) 102 F. Supp. 51; Mincy v. Detroit & Cleveland Nav. Co. (S.D.N.Y. 1950) 94 F. Supp. 456; Neset v. Christensen (E.D.N.Y. 1950) 92 F. Supp. 78; Bounds v. Streckfus Steamers, Inc. (D.Del. 1950) 89 F. Supp. 242; Bagner v. Blidberg Rothchild Co. (E.D.Pa. 1949) 84 F. Supp. 973.

[7] Leith v. Oil Transport Co. (3 Cir. 1963) 321 F.2d 591; Barnes v. E.J. Platte Fisheries (N.D.Miss. 1964) 237 F. Supp. 390; Rodriquez v. United Fruit Co. (E.D. Va. 1964) 236 F. Supp. 680; Blanco v. Gulf Coast Transp., Inc. (W.D. La. 1964) 235 F. Supp. 197.

[8] Connolly v. Farrell Lines, Inc. (1 Cir.) 268 F.2d 653, *cert. denied,* 361 U.S. 902 (1959); Garland v. Alaska S.S. Co. (D. Alaska 1961) 194 F. Supp. 792. These decisions are of dubious precedent value, however, since neither opinion discusses or cites the *Fourco* case.

[9] *E.g.,* Zonolite Co. v. United States (W.D.Pa. 1962) 209 F. Supp. 597 (venue in suits to set aside or enforce ICC orders); United Transit Co. v. United States (M.D. Tenn. 1957) 158

Hence, a casual glance at the rather formidable array of authorities would suggest that the court in *Leith* was correct in its strict application of the *Fourco* result to suits under the Jones Act. Nevertheless, we must disagree with the Third Circuit's interpretation of the *Fourco* opinion.[10] While we certainly deem that opinion controlling, we think its rationale compels a result contrary to that reached in *Leith*.

The special venue statute to which the plaintiff in *Fourco* sought to apply section 1391(c) provided as follows:

> "Any civil action for patent infringement may be brought in the judicial district where the defendant *resides*, or where the defendant has committed acts of infringement and has a regular and

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F.Supp. 856 (civil actions against the United States); R.J. Coulter Funeral Home, Inc. v. National Burial Ins. Co. (E.D. Tenn. 1960) 192 F. Supp. 522 (special venue provisions of the Clayton Act). Generally, the commentators seem to regard the *Fourco* result as necessary in all situations where special venue statutes come into play. See 1 Barron & Holtzoff, Federal Practice & Procedure § 80, at 387 (1960); 1 Moore, Federal Practice ¶0.144. However, Professor Moore has criticized the *Fourco* opinion as unsound. See 1 Moore, Federal Practice ¶0.144[9], at 1632.

[10] We do not minimize the fact that *Leith* is diametrically opposed to the result reached in the instant case. However, it does seem appropriate to observe that the court in *Leith* was careful to point out in its statement of facts that the suit was filed in a Pennsylvania federal court, the plaintiff was a resident of Tennessee, the defendants were incorporated and maintained their principal places of business in Louisiana, they were not licensed to do business in Pennsylvania, and the accident occurred while the vessel was docked in the navigable waters of the Ohio River at Paducah, Kentucky. In the course of the opinion in *Leith*, the court made pointed reference to the facts mentioned: "It did not arise there; the plaintiff does not live there; the defendants are not incorporated there and do not maintain a place of business there." 321 F.2d at 594.

established place of business." 28 U.S.C.A. § 1400(b). (Emphasis supplied.)

That section was re-enacted in 1948 along with the general revision of the Judicial Code which resulted in the expanded definition of corporate residence in section 1391(c). When section 1400(b) was re-enacted, the word "residence" was substituted for the word "inhabitant," but the court concluded from an examination of the legislative history of section 1400(b) that no substantive change was intended by the change in wording. Furthermore, as indicated by the Supreme Court's own review of the reasons for the passage of the predecessor to section 1400(b) in *Stonite Prods. Co. v. Melvin Lloyd Co.*, 315 U.S. 561, 86 L.Ed. 1026 (1942), the special venue section applicable to patent infringement actions was intended as a restrictive measure, designed to place greater limits on venue in patent infringement suits than those which had previously applied under the general venue provisions then in force. The Supreme Court thus concluded:

> "In light of the fact that the Revisers' Notes do not express any substantive change [in § 1400(b)], and of the fact that several of those having importantly to do with the revision say no change is to be presumed unless clearly expressed, and no substantive change being otherwise apparent, we hold that 28 U.S.C. § 1400(b) made no substantive change from 28 U.S.C. (1940 ed.) § 109 as it stood and was dealt with in the Stonite case."

353 U.S. at 227-28, 1 L.Ed.2d at 790.

We do not feel that the Supreme Court intended to foreclose the application of the expanded concept of a corporate defendant's residence to all special venue statutes. Our reading of *Fourco* convinces us that the court contemplates an analysis of the relationship of section 1391(c) to special venue statutes in light of the history and purpose of the special provisions.[11] As indicated above, the Court in *Fourco* focused sharply on the congressional intent that Section 1400(b) have a restrictive effect. Applying this broad principle to the specific venue statute which applies to Jones Act suits, we hold that section 1391(c) furnishes the definition of corporate residence for that statute. When the Jones Act was passed in 1920, the general venue section restricted proper venue over a corporate defendant to the district of incorporation. Hence, the inference is clear that the special venue requirements of the Jones Act, in contradistinction to those relating to patent infringement suits, were expansive and afforded the seaman an additional federal forum in which to present his Jones Act claim—the district of the principal office of his employer. Citation of authority is unnecessary for the proposition that the Jones Act is remedial legislation which is to be construed liberally in favor of enlarging the remedies of the injured seaman. We think it is also significant that the consent doctrine established in *Neirbo Co. v. Bethlehem Shipbuilding Corp.* 308 U.S. 165, 84 L.Ed. 167 (1939), under which a corporate defendant is deemed to have acceded to venue in the federal

[11] Such an approach has also been suggested by commentators. See, *e.g.*, Note, Venue in Private Antitrust Suits, 37 N.Y.U. L. Rev. 268 (1962); Recent Decision, 62 Mich. L.Rev. 897 (1964) (criticizing the result in *Leith v. Oil Transport Co., supra*).

courts of a state by appointing an agent and submitting to the jurisdiction of the state courts, was applied to Jones Act suits.[12] *Antonana v. Ore S.S. Corp.*, (S.D.N.Y. 1956) 144 F. Supp. 486; *Bennett v. Standard Oil Co.* (D.Md. 1940) 33 F. Supp. 871; see 1 Moore's Federal Practice ¶0.142[5-3], at 1492. The courts, on the other hand, have consistently refused to apply *Neirbo* to defendants in patent infringement litigation. *E.g., American Chemical Paint Co. v. Dow Chemical Co.* (6 Cir. 1947) 161 F.2d 956; *Bulldog Elec. Prods. Co. v. Cole Elec. Prods. Co.* (2 Cir. 1943) 134 F.2d 545. In light of these considerations, we do not think the result reached in *Fourco* is appropriate in the instant case.

Indeed, if a broad reading is not accorded the Jones Act, its remedial purpose may be thwarted by working a great inconvenience on the injured seaman who wishes to present his Jones Act claims in the federal court. In some cases, requiring the seaman to bring his action far from his home might deter his pressing his claims at all because of the prohibitive cost of transporting witnesses and conducting the trial in a distant forum. No greater

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[12] We note that the *Neirbo* doctrine could conceivably apply in the instant case, but the record is inadequately developed on the question. The parties stipulated that the defendant is "registered with the Secretary of State to do business in the State of Florida." Registration may refer to the statutory scheme embodied in Fla. Stat. Ann., §§ 47.34, 47.36, and 47.43, under which a foreign corporation must designate an office where process may be served or an agent on whom process may be served as a prerequisite to the maintenance of actions in the state courts. The *Neirbo* question was apparently not raised or considered in the district court. Furthermore, we cannot determine from the stipulations whether there has been such compliance with the Florida statutes concerning qualification to do business that *Neirbo* could be invoked. See Moss v. Atlantic Coast Line R.R. (2 Cir. 1945) 149 F.2d 701; Donahue v. M. A. Henry Co. (S.D.N.Y. 1948) 78 F.Supp. 91.

burden is imposed on the employer than would exist in any other civil action which he might be called upon to defend. Furthermore, if the employer were sued in a forum inconvenient to him, he could invoke the transfer provisions of 28 U.S.C.A. § 1404(a). A restrictive reading of the Jones Act venue provisions, on the other hand, would severely circumscribe the seaman plaintiff's remedies unless, of course, he institutes suit in a state court, where the Jones Act venue requirements would be inapplicable. See *Bainbridge v. Merchants & Miners' Trans. Co.*, 287 U.S. 278, 77 L.Ed. 302 (1932). An injured seaman has the alternative of filing a suit in admiralty in which he seeks relief under the substantive provisions of the Jones Act. In such a situation the venue provisions of the Jones Act would probably not restrict his choice of forums, see, *e.g.*, *Brown v. C. D. Mallory & Co.* (3 Cir. 1941) 122 F.2d 98; 2 Norris, The Law of Seamen § 675, but the plaintiff would have to forego his right to trial by jury.

We think the Jones Act's venue provision was meant to provide a convenient federal forum for the satisfaction of the seamen's personal injury claims against his employer. It is consonant with these purposes to give the term "residence" as used in the Jones Act an expansive interpretation, and we do not think such a reading of the Jones Act does violence to the rationale of *Fourco Glass Co. v. Transmirra Prods. Corp.*[13] Both the *Fourco* opinion

[13] Our construction of the special venue provisions of the Jones Act does not render totally meaningless the second predicate for venue in that section. It would still operate to provide an additional forum in which an injured seaman could sue an individual employer; venue as to such an employer would be proper in the district in which his principal office is located as well as the district in which he maintains his residence.

and the patent infringement statute adhere to the fundamental principle that an action may be brought against a corporation not only where the corporation resides, but also where the offending corporation has committed acts of infringement (the wrong) and has a regular and established place of business. In the very beginning of the *Fourco* opinion the Supreme Court pointedly observes that the trial court concluded that "there had been no showing of any acts of infringement in the district of suit . . ." In addition to the stipulated facts mentioned above, the complaint in the instant case alleges that the plaintiff is a resident citizen of Florida, that he was employed in Florida by the defendant in the capacity of seaman, that the defendant is a corporation doing business in the State of Florida, and that the alleged injury arose out of the employer-employee relationship. It is further stipulated that the vessels of the defendant operate in the ports of Florida and in the Southern District, that it sells its products in Florida in that district, and that the defendant "is registered with the Secretary of State to do business in the State of Florida."

There is a shocking inconsistency in a rule of law which permits a corporation to maintain a regular, established place of business in the district in question, transact a substantial amount of business there both before and after the event about which the plaintiff complains and at the time the suit is filed with the expressed intention to continue doing business in such locale, but allows the corporation to insist on a trial of the factual issues in the district in which it is incorporated or in which its principal office

is located. To do so would authorize it "to run with the hare and hold with the hound."

In the doing of substantial business in an area a corporation becomes a part of the mainstream to commerce which affects the welfare of many people including those it may negligently injure. It receives the benefits which normally come to those engaged in business in the area. The right to choose to do substantial business in a particular locality does not have to be exercised. However, once the choice is made it would be unjust to permit the offending corporation to continue its operations, in the course of which it also may be creating liabilities, and at the same time to grant it complete immunity from those liabilities by shielding it with a carapace of technical venue construction. Usually the witnesses, the evidence, and all the facts leading to the ultimate inquiry as to the truth could be presented more effectively and with less inconvenience than would be possible at the residence or principal place of business of the corporation, often a substantial distance from the place of the wrong. Such a principle cuts two ways and may serve both plaintiff and defendant alike.

We note in reaching this result we must assume that the purpose of the second clause of section 1391(c) was to define the residence of a corporate defendant for purposes other than those delineated in section 1391(a) and (b). Such an assumption appears to comport with the wording of the section. Of course, there is no problem of statutory construction present in the instant case which is comparable to that treated in *Robert E. Lee & Co. v. Veatch* (4 Cir. 1961) 301 F.2d 434, where the question of the applicability of the definition to a corporate plaintiff arose.

Indeed, the difficulty of applying section 1391(c) to a corporation suing as plaintiff may be, in part at least, accountable for the refusal of courts to apply that section to certain other special venue statutes, such as 28 U.S.C.A. § 1398, which relates to review of ICC orders, and 28 U.S.C.A. § 1402, which governs venue in civil actions against the United States.

For the foregoing reasons, we think the district court's denial of the motion to transfer was correct. As we read the Jones Act, it now provides that venue with respect to a corporate employer defendant is proper in any district in which it is "incorporated or licensed to do business or is doing business." The denial of the motion to transfer is AFFIRMED, and the case is REMANDED to the district court for further proceedings.

JUDGMENT OF THE COURT OF APPEALS

Before WISDOM and GEWIN, Circuit Judges, and BREWSTER, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the denial of the motion to transfer in this cause be, and the same is hereby affirmed, and that this cause be and it is hereby remanded to the District Court for further proceedings in accordance with the opinion of this Court.

It is further ordered and adjudged that the appellant, The Pure Oil Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

June 16, 1965